

## **REMARKS**

In the Office Action dated August 10, 2006, claims 1-14 were presented for examination. Claims 1-5 were objected to as containing an informality. Claim 1 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1, 6, and 9 were rejected under 35 U.S.C. §102(b) as being anticipated by *Smith*, U.S. Patent No. 5,832,068. Claims 1, 5, 6, 9, and 13 were rejected under 35 U.S.C. §102(a) as being anticipated by *Applicant's Admitted Prior Art (AAPA)*. Claims 2-4, 7, 8, 10-12, and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Smith* in view of *Applicant's Admitted Prior Art (AAPA)*.

The following remarks are provided in support of the pending claims and responsive to the Office Action of August 10, 2006 for the pending application.

### **I. Objection of Claims 1-5**

In the Office Action dated August 10, 2005, the Examiner assigned to the application objected to claim 1 as containing an informality. Applicant has canceled claims 1-14 and replaced them with claims 15-32. Applicant has transferred the correction of the informality to claim the single output stream with proper antecedent basis. Accordingly, Applicant respectfully requests that the Examiner remove the objection.

### **II. Rejection of Claim 1 under 35 U.S.C. §112, second paragraph**

In the Office Action dated August 10, 2006, the Examiner assigned to the application rejected claim 1 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically, the Examiner raised an issue with the term "merging" and

indicated a more definite term would be the term “copying”. In addition, the Examiner raised two more issues of indefiniteness. All these issues of indefiniteness are now mute in view of the replacement claims.

### **III. Rejection of claims 1, 6, and 9 under 35 U.S.C. §102(b)**

In the Office Action dated August 10, 2006, the Examiner assigned to the application rejected claims 1, 6, and 9 under 35 U.S.C. §102(b) as being anticipated by *Smith*.

The remarks pertaining to *Smith* provided in the response to the prior Office Actions are hereby incorporated by reference.

As noted above, Applicant has canceled claims 1-14 and replaced them with new claims 15-32. In the Office Action dated August 10, 2006, the Examiner states that a record index is equivalent to nodes of a binary tree. Applicant respectfully disagrees. Applicant’s amended claims specify the creation of a binary tree and processing of data items from at least three input data streams through the nodes and hierarchical structure of the binary tree, and to copy data items promoted from the input streams of data to a parent node of the binary tree to an output stream. There is no support for a binary tree in *Smith*. In fact, *Smith* does not teach all of the elements of Applicant’s claimed invention. Even if one were to consider the record index of *Smith* as nodes of a binary tree, there is no teaching, express or inherent, to process and promote data items from the nodes of the tree in a hierarchical manner. Furthermore, Applicant copies duplicate and non-duplicate data items promoted through the hierarchical binary tree to a single output stream. *Smith* copies only the non-duplicate data items to its index and duplicate data items to an exclusion list. In fact, based upon the interpretation by the Examiner, *Smith* creates two output streams, one being the record index (26) and the second being the exclusion list (28). Applicant specifically claims a single output stream. *Smith* does not expressly or inherently teach each of the elements claimed by Applicant. Accordingly, Applicant respectfully requests removal of the rejection under 35 U.S.C. §102(b).

#### **IV. Rejection of claims 1, 5, 6, 9, and 13 under 35 U.S.C. §102(a)**

In the Office Action dated August 10, 2006, the Examiner assigned to the application rejected claims 1, 5, 6, 9, and 13 under 35 U.S.C. §102(a) as being anticipated by Applicant's Admitted Prior Art (AAPA). As noted in the Response to the Second Office Action, the AAPA relates to merging two or more input data streams into a single sorted output stream. Pages 1 and 2 of Applicant's specification discuss the AAPA. As noted on these pages of the specification, the AAPA addresses forming a single output stream from multiple input streams. The AAPA also notes that there is only one known prior art solution for addressing duplicate data items discovered during the formation of the single output stream and that this solution only functions efficiently when "the number of input streams is an even power of 2". See page 2, paragraph 11. Applicant has canceled claims 1-14 and replaced them with new claims 15-32 to clearly address the selection replacement algorithm of Applicant with an odd number of three or more input streams and resolving comparison of duplicate data items in the input streams. The AAPA fails to illustrate an equitable solution for managing input streams containing duplicate data items in the manner claimed by Applicant. Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 1, 5, 6, 9, and 13.

#### **V. Rejection of claims 2-4, 7, 8, 10-12, and 14 under 35 U.S.C. §103(a)**

In the Office Action dated August 10, 2006, the Examiner assigned to the application rejected claims 2-4, 7, 8, 10-12, and 14 under 35 U.S.C. §103(a) as being unpatentable over *Smith*, U.S. Patent No. 5,832,068, in view of Applicant's Admitted Prior Art (AAPA).

The comments pertaining to AAPA and *Smith* in the Response to the prior Office Actions and above are hereby incorporated by reference.

It is Applicant's position that neither *Smith* nor AAPA teach each of the limitations in Applicants independent claims 15, 21, and 27. If a limitation is not found in an independent claim, then it is not found in the dependent claims either. In the present case, the compilation of

the single output stream of Applicant and process for resolving duplicate data items in the binary tree is incorporated by reference into each dependent claim of the application. The analysis above shows that neither *Smith* nor *AAPA* anticipates the elements of Applicant's independent claims. Accordingly, Applicants respectfully requests removal of the rejection of claims 15-32 as a replacement for claims 2-4, 7, 8, 10-12, and 14, and direct allowance of the above dependent claims.

## **VI. Conclusion**

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicant requests that the Examiner indicate allowability of claims 15-32, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Respectfully submitted,

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